

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Mary Pritchard Paul,	:	
	:	C.A. No. 05-07-0135AP
Plaintiff below/	:	
Appellee.	:	
	:	
v.	:	
	:	
Darlene Sturevant,	:	
	:	
Defendant below/	:	
Appellant,	:	
	:	

Decision after Trial

Submitted: April 18, 2006

Decided: April 19, 2006

Judgment is entered for the plaintiff, Mary Pritchard Paul.

**Mary Pritchard Paul, 6 Woods End, Dover, Delaware 19901, Pro Se
Plaintiff/Appellee.**

**Darlene Sturevant, 18 West Lake Street, Middletown, Delaware, 19709, Pro Se
Defendant/Appellant.**

Trader, J.

In this appeal from the Justice of the Peace Court, I hold that the plaintiff can maintain a replevin action to obtain the motor vehicle title to the 1982 trailer, which was unlawfully detained by the defendant.

The relevant facts are as follows: In September 2004, the defendant, purchased a 1982 trailer for her daughter, the plaintiff. At that time, the defendant indicated that the purchase of the trailer was a gift to the plaintiff. The plaintiff took possession of the trailer and has lived there since September 2004. Subsequent thereto, differences arose between the mother and the daughter, and the defendant now denies that the purchase of the trailer was a gift to the daughter. The plaintiff made practically all of the payments on the trailer and also paid for improvements to the trailer, but the defendant signed the Lease Agreement (Defendant's Exhibit No. 1) and is the purchaser listed on the motor vehicle title to the trailer. (Defendant's Exhibit No. 2). The plaintiff filed this civil action to determine the ownership of the trailer.

The initial issue in this case is whether there has been a gift from parent to child. A gift between parent and child requires the intention to transfer property and delivery and acceptance of the gift. 59 Am. Jur. 2d *Parent and Child* Sec. 91 (2002). An unexplained transfer of property between parent and child gives rise to an inference of a gift. 59 Am. Jur. 2d *Parent and Child* Sec. 92 (2002).

In the case at bar, the defendant told the plaintiff that she was giving her the trailer. The defendant transferred \$2000.00 to the seller in behalf of the plaintiff and she transferred possession of the trailer to the plaintiff. Although the defendant is listed as the purchaser on the motor vehicle title, I believe the plaintiff's testimony that the purchase of the trailer was a gift to her. Her testimony is supported by the testimony of

Brianne Johnson. Therefore, I accept the testimony of the plaintiff and reject the testimony of the defendant.

The second issue is whether the plaintiff may obtain the title to the trailer in an action of replevin. Replevin is primarily a form of action for the recovery of possession of personal property which has been taken or withheld from the owner unlawfully. *Harlan and Hollingworth Corp. v. McBride*, 69 A.2d 9, 11 (Del. 1949). “While the right asserted in replevin is on its face a right to possession, nevertheless, it has become over the years a useful method to determine the title to goods and chattels.” *In re Markel*, 254 A.2d 236, 239 (Del. 1969)(citations omitted). Replevin has also been considered as a means of trying title to the property involved and an appropriate form of action in which to determine which of two contending parties is the owner. 77 C.J.S. *Replevin* Sec. 5 (1994). Replevin can also be maintained by a plaintiff who does not hold the legal title to the property. *Willey v. Wiltbank*, 567 A.2d 424 (Del. 1989).

Replevin may be brought to recover any specific property unlawfully detained from the owner thereof. 77 C.J.S. *Replevin* Sec. 10 (1994). Examples of the type of goods and chattels which may be recovered include deeds, 66 Am. Jur. 2d Sec. 8 (2001), certificates of deposit, stock certificates, and promissory notes. 66 Am. Jur. 2d *Replevin* Sec. 10 (2001).

In the case before me, I hold that the trailer was a gift from the defendant to the plaintiff. Since I hold that plaintiff is the rightful owner of the property, she is entitled to possession of the motor vehicle certificate that was wrongfully withheld by the defendant.

Judgment is entered in behalf of the plaintiff, Mary Pritchard Paul, and against the defendant, Darlene Sturevant, for possession of the title to the 1982 trailer. Therefore, I direct the motor vehicle department to transfer the title to this 1982 trailer to Mary Pritchard Paul.

IT IS SO ORDERED.

Merrill C. Trader
Judge